IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7184 of 1991

with

SPECIAL CIVIL APPLICATION No 1922 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes. : YES

2. To be referred to the Reporter or not? Yes. :

3. Whether Their Lordships wish to see the fair copy of the judgement? - : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? - : NO

5. Whether it is to be circulated to the Civil Judge? - : NO

BALBIR VASISHT

Versus

NATIONAL TEXTILE CORPORATION

Appearance:

2. In Special Civil Application No.7184 of 1991.
MR DC RAWAL FOR MR MR ANAND for Petitioner
MR BR GUPTA for Respondent No. 1

2. Special Civil ApplicationNo 1922 of 1996
M/S TRIVEDI AND GUPTA Petitioner
MR BR GUPTA for Respondent No. 1

CORAM : MR.JUSTICE KUNDAN SINGH
Date of decision:-17-2-2000.

ORAL JUDGEMENT

As both the parties are one and the same and both the petitions arise out of the some departmental disciplinary proceedings initiated by the Respondent Corporation against the petitioner and are interconnected and hence both these petitions are being disposed of by this common judgment.

2. Special Civil Applications No.. 7184/91 and 1922/96 are interconnected and pertaining to the departmental proceedings against the petitioner and hence both these petitions were directed to be heard together by the order dated 7-12-1999. Both these petitions have been argued by the learned counsel for the petitioner for two days and both these petitions were kept for hearing the learned counsel for the respondent Corporation on 22-12-1999. On 23-12-1999 learned counsel for the respondent Corporation contended that this Bench has no jurisdiction to hear Spl. C.A. No. 1922/96 and the same should be released to be heard by another bench as this Bench has not been entrusted with hearing of the Special Civil Applications for the year 1995 and onward. Business for hearing Spl. C. Applications from 1980 to 1994 is entrusted to this Bench. Learned counsel for the respondent did not intend to argue Spl. C.A. 1922/96 before this Bench, when this Bench refused the request of learned counsel for the respodnent as no party can claim to argue his case before a particular Bench then learned counsel for the respondent requested this Court to hear him in both these petition and he was permitted to argue both these petitions before this Bench. The learned counsel for the respondent Corporation was given full opportunity of hearing and heard at length in both the petition. It is pertinent to note here that the respondents have not filed any affidavit-in-reply in the petition being S.C.A. No. 7184/91.

3. The petitioner applied for the post of Law Officer in the respondent Corporation by an application dated 15-10-1983 and after holding interview on 27-4-1984 the petitioner was appointed as a Law Officer vide the appointment letter dated 14-5-1984. After completion of the probation period the petitioner was confirmed in the service as the Law Officer by the order dated 12/14-12-1984 with effect from 15-6-1984 and the

petitioner was placed in regular pay-scale of the General Manager. Later on, he was given additional charge of the Head of Vigilance Department and thereafter that of administration and personnel department in addition to his own charge of Legal Department. In the year 1985 C.B.I. registered the cases against some of the officers of the respondent Corporation on the preliminary report submitted by the petitioner as Vigilance Officer of the respondent - Corporation. The petitioner was required to attend annual conference of the Personnel Executives at Bombay. On return the petitioner submitted his T.A and D.A. claim. The petitioner was transferred from Ahmedabad to Rajkot. The petitioner challenged his transfer order by filing Spl. C.A. No.5508/86 in this Court wherein the petitioner was directed to resume his duties at Ahmedabad and the order of transfer was stayed. Later on, the respondent Corporation agreed not to implement the transfer order and hence the said petition was withdrawn. The Chairman-cum-Managing Director Mr. Dalal retired from the service in the year 1987. But he issued a show cause notice dated 10-4-1987 wherein it was alleged that the petitioner was guilty of claiming Rs. 285/-/ more than what was due to him by way of T.A. and D.A. when he visited Bombay in February, 1986 for attending annual conference of Personnel Executives and in pursuance of the show cause notice the petitioner was dismissed from service. The petitioner challenged his dismissal order in this Court by way of filing Spl. C.A. No. 4904/87 wherein this Court issued the notice and the implementation and execution of the order was stayed vide order dated 29-9-1987 and the petitioner was allowed to resume his duties. Ultimately, the respondent Corporation filed Civil Application No. 745/89 in Spl. C.A. No. 4904/87 with an agreement therein that the respondent Corporation will hold de-novo inquiry in accordance with law from the stage from which it was conducted exparte against the petitioner. As such Spl. C.A. No.4904/87 had became infructuous and it was withdrawn on 20-06-1989.

4. After holding the inquiry penalty of reversion to a lower grade was imposed by the order dated 20-3-1991 as Manager in the grade of 3000-5000 though the petitioner was getting General Manager's grade of 4500-5700. The petitioner filed departmental appeal before the Board of Directors on 29-4-1991. The appeal of petitioner was rejected by a non-speaking order and he was communicated by the letter dated 31-7-1991 wherein it was stated that the Board of Directors has decided to confirm the penalty imposed by the Chairman-cum-Managing Director. As such, the petitioner has challenged the reversion order of the

Disciplinary Authority of the appellate authority by means of filing Special Civil Application No. 7184/91. It is also stated that the petitioner resorted to the legal proceedings challenging the reversion order passed by the respondent Corporation and hence the petitioner incurred displeasure of the authorities of the respondent Corporation and due to that grudge the Chairman-cum-Managing Director issued the show cause notice dated 6-9-1993 and without awaiting for explanation from the petitioner, the respondent Corporation passed the order dated 6-9-1993 placing the petitioner under suspension. The petitioner challenged the show cause notice as to why disciplinary proceedings should not be instituted against him as well as the suspension order dated 6-9-1993 passed by the respondent Corporation by means of filing Special Civil Application No. 10727/93 wherein the Hon'ble Single Judge of this Court stayed the implementation of the suspension order but no interim order was passed in connection with the show cause notice dated 6-9-1993 regarding initiation of domestic inquiry. The respondent Corporation filed Letters Patent Appeal No.84/94 against the order dated 16-2-94 of the learned Single Judge whereby the interim relief to stay the order of learned Single Judge regarding suspension order of the petitioner was granted. The said Letters Patent Appeal was admitted on 3-5-1994 against the order granting interim relief to stay the operation of suspension order which is still pending though now it has become infructuous after completion of domestic inquiry. It appears that the order passed by the learned Single Judge was stayed by the Division Bench in Letters Patent Appeal No. 84/94 on the assumption that the writ petition against the suspension order was allowed which would amount to final disposal. Mr. J.N. Parikh was appointed as the Inquiry Officer for conducting the inquiry against the petitioner in respect of the show cause notice dated 6-9-1993 and the petitioner continues as law officer of the respondent Corporation upto year 1988-89. It is alleged that the petitioner having been well conversant and full knowledge about the black listing of the supplier parties M/s. Parco Dye-Chem and its sister concerns, gave his legal opinion in favour of M/s. Parco Dyechem and its sister concerns for release of the payment in writing vide his note dated 26-7-1988 to the then General Manager (Finance) of the respondent Corporation and the petitioner acted arbitrarily without any bonafide and valid reasons in giving his opinion to release payment to the said M/s. Parco Dyechem and its sister concerns. The petitioner had not consulted the Vigilance Department of the respondent Corporation or made any reference to

the C.B.I. authority for obtaining their views about release of payment of the said supplier M/s. Parco Dyechem and its sister concerns. He persuaded the concerned General Manager of the Mills to make payment to the said supplier party and its sister concerns and thereby the petitioner caused pecuniary loss to the respondent Corporation and committed act amounting to criminal conspiracy involving moral turpitude under Rule 5 (v), 5 (i) and 5 (xviii) of the National Textile Corporation (Gujarat) Limited Employees' Conduct, Discipline and Appeal Rules, 1974. It is further alleged that the petitioner was working as retainer Advocate for M/s. Shree Saraswati Spinning Mills, Bhivani, Haryana on and from February, 1979 by using his name as "Balbir Sharma". In spite of it, in his bio-data, dated 27-4-1984 furnished to the Corporation he had shown his name as "Balbir Vasisht". This act of the petitioner about his impersonation or concealment of facts, which precluded him from getting employment in Public Sector Undertaking and thereby his conduct is unbecoming of a public servant, under Rule 4 (iii) and 5 (iv) of the National Textile Corporation (Gujarat) Ltd. Employees' Conduct, Discipline and Appeal Rules, 1974.

5. After examination of the witnesses the Inquiry Officer submitted his inquiry report dated 8-6-1995. The Inquiry Officer had arrived at the conclusion that both the charges against the petitioner were proved beyond reasonable doubt. The Disciplinary Authority passed the order dated 7-7-1995 dismissing the petitioner from service of the respondent Corporation with immediate effect. Thereafter, the petitioner preferred an appeal before the Board of Directors of the respondent Corporation. By the letter dated 18-10-1995 the petitioner was informed that the appeal of the petitioner dated 7-8-1995 has been rejected. The petitioner has preferred Special Civil Application No. 1922/96 against the order of dismissal and the order of the appellate authority, on 11-3-1996.

6. First of all I take up Special Civil Application No. 7184/91 wherein the petitioner has challenged the order dated 28-3-1991 whereby the petitioner was reverted to the lower grade as well as the order of the appellate authority dated 31-7-1991 dismissing the petitioner's appeal and confirming the order of reversion Annexure "L" and "N" respectively.

7. In this respect, Mr. N.K. Patel, P.W. 1 stated that the petitioner was asked to attend Annual Meeting at Bombay. He was sanctioned Rs.2000/- as an advance for

Bombay visit. The petitioner lodged T.A/D.A. bill for Rs.1467-50 paise and remaining amount was also deposited by him. The petitioner was entitled only for Rs. 1314-50 paise than he over withdrew an amount of Rs.. 153/- out of which the petitioner deposited Rs.33/- when he came to know that he was not eligible to be entitled for the miscellaneous expenses of Rs. 33/-/-. Thus, he over withdrew the amount of Rs.120/-. It is also stated that he claimed Rs. 285/- for the rent of room no. 205 in the Popular Palace Hotel by bill dated 14-2-1986 bearing No. M/10 though he was entitled for Rs.170/only as per T.A./D.A. Rules bearing no. Secy/6999/84 dated 28-8-84. Secondly, the petitioner claimed Rs.150/for the stay in Moonlight Hotel by a Bill dated 16-2-1986 bearing No. 3387 showing stay from 15-2-1986 but subsequently it has been changed as 14-2-1986. This claim was for 2 1/2 days. Thus, the petitioner charged the bill of 14/2/1986 twice one from Moonlight Hotel and the receipt of Hotel Populr Palce, and he charged Rs.150/- by presenting fictitious bill of Moonlight Hotel when he did not stay there. It is pertinent to note that the petitioner's claim of T.A. and D.A. relating to visits at Bombay was found excess of Rs. 285/- though he was eligible for only Rs.170/-/-. The petitioner obtained the bill No.23787 of Moonlight Lodging House without staying in the said hotel and he had claimed an amount of Rs. 175/on the basis of that fraudulent bill. It appears from the charge excessive amount taken by the petitioner was very meagre amount of Rs.120/- and hence the petitioner was awarded punishment of reversion to a lower grade by the disciplinary authority and that punishment was confirmed by the appellate authority.

8. Firstly, the petitioner challenged the departmental inquiry proceedings on the ground that the petitioner asked the copies of the documents relied on against him by letters dated 17-4-1987 but no photostate copies of the documents were supplied to him. He also required copies of the statements of witnesses produced by the department against him in the inquiry but they were also not given. Secondly the preliminary investigation was conducted by Mr. Chauhan and Mr. Chauhan had gone to Bombay and inquired there but he has not produced any original note to prove the charges against the petitioner. The copies of the statements recorded in the preliminary investigation were not given to the petitioner before initiating the departmental inquiry and some report was submitted by Mr. Chauhan but that report has not been produced in the departmental inquiry. The extracts of registers of the aforesaid hotel brought by Mr. Chauhan have also not been produced

in the departmental inquiry. Letter dated 25-5-1987 has also not been produced as it was not in the file. The learned counsel for the respondent contended that the finding is that the petitioner was staying in the hotel Popular palace and deposited rent for three days from 14-2-1986 to 16-2-1986 which is Rs.285/-.The petitioner has not explained as to why he vacated room No. 205 of Popular Palace Hotel nor he has stated that he was asked to vacate the said room on 15-2-1986. The receipt produced through the evidence of Mr. Patel speaks No. 23787 and it is for Rs. 50/- per day which is dated 15-2-1986 and the amount of Rs. 50/- was collected from Gulabchand. For the said bill, the name of the petitioner appears which leads to believe that the bill of mooonlight lodging house was obtained by the petitioner so as to grab more money from the Corporation. The petitioner also asked for supply of the copies of the documents but he has not offered any prejudice caused by nonsupply of copies of some of the documents as he has conducted inspection. According to the learned counsel for the respondent the findigns of the Enquiry Officer are fully justified on the facts of the case and they cannot be judiciary reviewed under Article 226 of the Constitution of India by this Court. The learned counsel for the petitioner submitted that there were only two charges against him arising from the visit to Bombay in February, 1986. He visited Bombay for three days. Firstly he had stated that he stayed in hotel Popular Palace which was booked by Mr. Dalal, Chairman-cum-Managing Director. The said room was not available beyond one night and hence the petitioner had to vacate that hotel after first day and he had paid Rs. 285/- for one night and two days. Then he stayed at Hotel Moonlight for next night and paid Rs. 175/-. The documents procured from the hotels were not produced by the witnesses who were examined in the departmental inquiry. The petitioner was not supplied all the documents and the copies of the departmental report which are required under the relevant Rules. Both the witnesses Mr. Indravadan and Mr. Vyas are the personnel of the respondent Corporation. On the ground of nonsupply of documents the enquiry against the petitioner is vitiated in violation of the principles of natural justice and findings of the Inquiry Officer are perverse.

9. The contention of the learned counsel for the petitioner is that the order of reversion to the lower grade is illegal and cannot be passed. In support of his contention he has relied on proposition of law settled by the Apex Court in the case of State of U .P. and others Vs. Smt. Jaya Quddusi, reported in AIR 1994 SC 2254,

wherein it has been held that the order of reversion was bad in law since being a direct appointee to the post of Probation Officer, she could not have been reverted to any post much less to the post of Assistant Superintendent. He further relied on the decision of the Apex Court in the case of Hussain Sasansaheb Kaladgi Vs. State of Maharashtra, reported in AIR 1987 SC 1627, wherein it has been held that a direct recruit to a post cannot be reverted to a lower post. It is only a promotee who can be reverted from the promotion post to the lower post which he was promoted. The order of the State Govt. reverting the petitioner, a direct recruit to the post of Assistant Deputy Educational Inspector, to the lower post of primary teacher was unsustainable. The learned counsel for the respondent admitted that the petitioner is a direct recruit but the department has taken a very lenient view in awarding the punishment of reversion.

10. It is true that this Court can not reassess or reappreciate the evidence produced in a domestic inquiry under judicial review but it does not mean that the findings recorded by the inquiry officer are gospel truth and conclusion is sactrosanct under the guise that rule of evidence is not applicable in the inquiry. However, it can be said in this case that the an opportunity for effective crossexamination of the witnesses examined and produced by the department could not be done due to non-supply of copies of statement of the witnesses and of other documents to the delinquent officer. Secondly, Mr. Chauhan is said to have inquired from both the hotels of Bombay has not been produced by the department regarding the entries made in the registers with regard to arrival and departure of the petitioner from the said hotels at Bombay and that also prejudiced the defence of the petitioner though it is a well settled law that the rule of evidence is not applicable in the departmental proceedings. But where certain proceedings have been conducted prejudicial to the delinquent petitioner in the departmental proceedings that fact can be taken into account and reasonable opportunity could have been given to the delinquent petitioner to meet out certain factual aspects of the case and for effective cross-examination of the witnesses. Non-supply of the documents including the statements of officials of both the Hotels of Bombay recorded by Mr. Chauhan in preliminary investigation and the report submitted by Mr. Chauhan and non-supply of the departmental inquiry report required under Rule 28 of the Rules aforesaid vitiates the departmental proceedings as violative of the principles of natural justice. Even then the order of reversion of the petitioner who is a

direct recruit to the post of Law Officer holding additional charge of the administration and personnel of the General Manager could not have been reverted to the lower post of Manager or Dy. Manager in view of rule of law laid down by the Apex Courrt in the cases cited by learned counsel for the petitioner. As such, the orders passed by the disciplinary authority and confirmed by the appellate authority are not sustainable in the eye of law. Now, it is to be considered as to whether in the facts and circumstances of the case, the petition can be awarded any other punishment in place of punishment of reversion. For this purpose, we should see the punishment awarded in the Rule 23 of National Textile Corporation (Gujarat) Ltd. Employees' Conduct, Discipline and Appeal Rules, 1974, which reads as under :

"Penalties :-

The following penalties may be imposed on an employee, as hereinafter provided, for misconduct committed by him or for any other good and sufficient reasons :

Minor Penalties :

a) Censure;

b) Withholding of increment of pay with or without cumulative effect;

c) Withholding of promotion;

d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation/Company by negligence or breach of orders.

Major Penalties.

e) Reduction to a lower grade or post, or to a lower stage in a time scale;

f) Removal from service which shall not be disqualification for future employment;

g) discharge;

h) Dismissal.

Explanation : The following shall not amount to a penalty within the meaning of this rule:

i) withholding of increment of an employee on account of his work being found unsatisfactory or not being of the required standard, or for failure to pass prescribed test or examination;

ii) stoppage of an employee at the efficiency bar in time scale, on the ground of unfitness to to cross the bar;

iii) non-promotion, whether in an officiating capacity or otherwise, of an employee, to a higher post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

iv) reversion to a lower grade or post, of an employee officiating in a higher grade or post, on the ground that he is considered after trial, to be unsuitable for such higher grade or post, or on administrative grounds unconnected with his conduct;

v) reversion to his previous grade or post of an employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with terms of his appointment;

vi) Termination of service -

a) of an employee appointed on probation during or at the end of the period of probation, in accordance with the terms of his appointment;

b) of an employee appointed in a temporary capacity otherwise then under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;

c) of an employee appointed under a

contract or agreement, in accordance with the terms of such contract or agreement; and

d) of any employee on reduction of establishment.

11. It appears from the gravity of the misconduct of the petitioner the respondent did not think it proper to award the punishment of removal, discharge, or dismissal which could have been awarded for grave/gross misconduct which was not found and the respondent wanted to avail the services of the petitioner. At this stage, it has to be seen whether without holding the disciplinary inquiry vitiated violative of principles of natural justice i.e. non-supply documents for effective cross-examination of witnesses and nonexplanation of vital/most relevant and necessary witness Mr. Chauhan, after setting the punishment of reversion, the disciplinary authority should be directed to award other minor penalty or this Court is competent to award the minor penalty in place of major penalty of reversion. In this respect the Apex Court has laid down rule of law in the case of B.C. Chaturvedi, Vs. Union of India, reported in 1996 SC 484, relevant portion is reproduced as under :

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority , being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review , cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to consider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent resorts in support thereof.

12. According to the rule laid down by the Apex Court, this Court can direct the disciplinary/appellate authority to reconsider to award an other appropriate

punishment or this Court can also impose appropriate punishment in order to shorten litigation. In case this Court directs the disciplinary authority for reconsideration of punishment imposed upon the petitioner there would be more probability of further litigation by means of appeal, writ petition and other litigations and in view of latest trend of judicial system is to shorten litigation, as such I think it just and proper in the facts of the case, even the domestic inquiry is held not vitiated violative of principles of natural justice for nonsupply of documents and non-examination of Mr. Chauhan who conducted preliminary investigation, as stated above. The petitioner claimed Rs.285/- though he was entitled for Rs.175/- only and/or claim for the rent of Moonlight Hotel could not be held fictitious in the absence of examination of P.W. Mr. Chauhan and major punishment of reversion to lower grade shocks the conscience of the Court for the acts of the petitioner not amounting to gross misconduct, the punishment of withholding of three increments of pay for a period of three years without cumulative effect in place of punishment of reversion would be proper and sufficient to be is awarded.

13. Now, I discuss the matter regarding other departmental inquiry and punishment of dismissal which gave rise to Spl. C.A. No. 1922/96, wherein the petitioner is said to have impersonated himself as Balbir Vasisht though he was working as Balbir Sharma as retainer advocate for Shri Saraswati Spinning Mills, Bhivani, Haryana on and from February, 1979 and on the basis of his opinion payment was made to the black listed supplier M/s. Parco Dyechem and its sister concern being aware of the F.I.R. filed by the C.B.I. against the said supplier Company - M/s. Parco Dyechem and its sister concerns.

14. Firstly, in this respect the learned counsel for the petitioner referred several documentary evidence to show that the petitioner being name as Balbir Vasisht has passed B.A. Examination in the year 1966 from Delhi University. He was also enrolled as an advocate in the name of Balbir Vasisht on 16-11-1990. He has also passed Secondary Examination in the year 1963 in the name of Balbir Vasisht. He was also given the experience certificate by M/s. Saraswati Spinning Mills, Bhivani (Haryana). This Court also passed the order dated 16-2-1994 in Special Civil Application No. 10727/93 regarding interim relief claimed by the petitioner, wherein this Court has made observations which read as

under :

"Petitioner before seeking employment with the respondent Corporation was working as Retainer Advocate for M/s Shree Saraswati Spinning Mills, Bhivani, Haryana on and from February 1979 till 1984. Then he submitted his application before respondent for the present post of Law Officer. According to the respondent, he was serving with said M/s. Shree Saraswati Spinning Mills, Bhivani, using his name as Balbir Sharma while in bio-data furnished by him on 27-4-84 to the respondent Corporation, he had shown his name as Balbir Vasisht M/s. Saraswati Spinning Mills, Bhivani, Haryana itself has issued a character certificate to the petitioner and the same is in the name of Balbir Vasisht. If the petitioner was working with said M/s. Shree Saraswati Spinning Mills as Balbir Sharma, how that very company issued certificate to the petitioner in the name of Balbir Vasisht ? It can be said that if any impersonation is committed, the same is committed with M/s. Shree Saraswati Spinning Mills, Bhivani and not with the respondent Corporation. If the petitioner was serving as Balbir Sharma with that Company at Bhivani, then that Company would not have issued a certificate to the petitioner in the name as Balbir Vasisht. Apart from this, the petitioner is enrolled as Advocate with Punjab and Haryana Bar Council as Balbir Vasisht and not Balbir Sharma. It is the say of the petitioner that that he is also known as Sharma in his native place. Therefore, the charge of impersonation is based on these facts and it is stated that the petitioner has committed an act of misconduct, which is unbecoming of a public servant as per the Rules. It is, however, not shown how this act of impersonation is likely to hamper the inquiry or investigation or is likely to cause interference or tampering with the witnesses. To prove this fact, respondent must be relying on the evidence of certificate and receipt issued to the petitioner by M/s. Shree Saraswati Spinning Mills, Bhivani, which has nothing to do with the working of the petitioner with the respondent Corporation.

15. Thus, the contention of the learned counsel for the petitioner is that the petitioner has not impersonated the respondent Corporation as he was working

in the name of Balbir Vasisht and not in the name of Balbir Sharma at any point of time. In this respect it appears that some amount was received by the petitioner from the said supplier Company of Haryana in the name of Balbir Sharma. On the basis of that receipt, the respondents department came to know that the petitioner was practising as an advocate in the name of Balbir Sharma and not as Balbir Vasisht. The petitioner moved an application to examine certain witnesses namely (i) Shri O.P. Agrawal, the then General Manager (F), (ii) Shri K.V. Rao, the then Director (F), (iii) Shri R.V Chetty, the then C.M.D, in advance from Shri Saraswati Spinning Mills, Bhivani. The petitioner was asked to deposit an amount of Rs.20,000/- towards their travelling allowance etc. As the petitioner was under suspension could not be able to deposit the said amount of Rs.20,000/- and that order for depositing the amount of Rs.20,000/- is illegal and not sustainable in the eye of law and the petitioner was denied reasonable opportunity of defending in summoning the material witnesses. Thus, reasonable opportunity of defence was denied to the petitioner. The charge of impersonation is based on the receipt issued by aforesaid Shree Saraswati Spinning Mills, Bhivani, Haryana in the year 1983. The petitioner was appointed in the respondent Corporation on 14-5-1984 and the departmental proceedings were initiated in the year 1993. As such, the charge in that respect being highly belated one is not sustainable in the eye of law. Admittedly, the original receipt of the year 1983 issued by aforesaid Shree Saraswati Spinning Mills of Bhivani in favour of the petitioner in the name of Balbir Sharma has not been filed or produced and only photostat copy of the same has been produced. No witness has been examined from the aforesaid Shree Saraswati Spinning Mills of Bhivani to show that the petitioner has ever shown or identified himself as Balbir Sharma in place of Balbir Vasisht. Some official of the respondent Corporation went to Bhivani - Shree Saraswati Spinning Mills, where he inquired as to whether the petitioner was working as an advocate in the name of Balbir Sharma and he was informed that in the office of the Shree Saraswati Spinning Mills, Bhivani he was practising in the name of Balbir Sharma. But he refused to state this fact before any authority even in the departmental proceedings. It is only a bald statement alleged to have been made by some officer of the respondent Corporation who met and inquired in this respect from some official of Shree Saraswati Spinning Mill, Bhivani. The original document i.e. receipt of the year 1983 issued by Shree Saraswati Spinning Mills, Bhivani is not found on record. In absence of that document and any cogent evidence from

said Mills of Bhivani it would be unreasonable to place reliance on the bald statement of the official of the respondent Corporation more particularly said Mills of Bhivani has issued character experience certificate in favour of the petitioner in the name of Balbir Vasisht. Though this Court is not competent to appreciate the evidence produced in the departmental inquiry but where the finding based on some evidence which is totally unreliable and unbelievable by a prudent man, this Court can certainly interfere with the finding as held in the decision of the Apex Court in the case of B.C. Chaturvedi Vs. Union of India reported in AIR 1996 SC 484,

16. Thus, in view of the above discussion, I am constrained to hold that the finding of the inquiry officer and basing upon that finding the disciplinary authority punishment of dismissal, is unwarranted and not sustainable in the eye of law which is also supported with denial of nonsummoning of material witnesses.

17. So far the next charge with regard to payment made by the respondent Corporation to the black listed Company and its sister concerns on the basis of the opinion of the petitioner is concerned, M/s. Parco Dyechem sent a notice to the respondent Corporation for recovery of the amount of raw materials supplied by the said M/s. Parco Dyechem. The petitioner immediately rushed to the retainer advocate M/s. Nanavati and Nanavati Advocates, to consult as to whether payment to said M/s. Parco Dyechem should be made or not. On 21-7-1988 M/s. Nanavati & Nanavati Advocates gave opinion that the goods which have been supplied to the respondent Corporation by the Company being raw materials have been utilized by the Textile Unit of the respondent Corporation and none of the raw materials has been rejected and sent back to the party and once raw material has been utilized the question of stopping payment because of some C.B.I. inquiry does not arise. C.B.I. inquiry was pending regarding one of the colour and that local colour was supplied in collusion of the Mills' Official though that colour was to be supplied by some concern of Pune. Mr. O.P. Agrawal, G.M. (F & A) of the respondent Corporation asked an opinion from the petitioner by the letter dated 22-7-1988 and it is stated in the said letter that although there are no clear instructions from the G.M. (Vigilance) for withholding payment of the aforesaid parties, the Mills in most of all the cases withheld payments of these parties. Now, the Mills are approaching the respondent Corporation for advising them as to whether payments to these parties in

respect of their supplies upto December 1987 should also to be released or not. The matter was discussed with the petitioner earlier with reference to the legal notices received from the parties and the petitioner was requested to advise as to whether M/s. Parco Dyechem and their sister concerns have to be paid their dues in respect of materials received and payment thereof has fallen due according to the terms of purchase. Advice was sought in view of the fact that the some investigation was under process in respect of the supplies made by M/s. Parco Dyechem and hence he was requested to give his advice. The petitioner vide his letter dated 26-7-1988 gave reply that withholding of dues mainly on the ground that investigation agency was in progress, was not tenable in the eye of law and that opinion was based on the basis of the discussion with Shri S.I. Nanavati of M/s. Nanavati & Nanavati Advocates who were entrusted to file reply to the notice sent by M/s. Parco Dyechem and its allied sister concerns. The petitioner was informed by C.B,I. that they were investigating only in respect of "PTHALOGEN-BLUE" and not any other colour or chemical. It was further advised that the respondent Corporation has no legal ground on which the amount of store purchases of the above parties can be withheld. If the party files any civil suit for recovery of the outstanding dues, the respondent Corporation would be liable to make payment along with interest and costs which would be an additional burden of payment on the respondent Corporation. The opinion obtained from M/s. Nanavati & Nanavati Associates was also enclosed. The note of the petitioner dated 26-7-1988 was submitted to the G. M. (F & A). Thereafter, G.M. (F. & A.) made a note that they have cleared store dues of all parties upto Oct. 87 except M/s. Parco Dyechem & their sister concerns. He also recommended to reimburse funds to Mills for making payment to M/s. Parco Dyechem & their sister concerns and that note was submitted for consideration and approval to the Director (F) and by the note an endorsement is made " We go by the legal opinion." That note was submitted to the Chairman-cum-Managing Director who approved the same by using a word "Yes" and accordingly, the payment was made.

18. The learned counsel for the respondent Submitted that the fact of two circulars regarding black listing the Company was not brought to the notice of the advocate of National Textile Corporation and hence the findings recorded by the inquiry officer in this respect are justified and cannot be said to be perverse or unreasonable. On the contrary, the learned counsel for

the petitioner submitted that it is the opinion of the petitioner on the basis of the opinion given by the retainer advocate M/s. Nanavati & Nanavati Advocate. The petitioner was not the final authority for giving directions for making payment to the companies concerned. The higher authorities could have taken different view withholding the payment and could have refused to rely on the advice of the petitioner.

19. The opinion is based on the opinion of the retainer advocate of the respondent Corporation and secondly the opinion is opinion and that opinion could have been ignored by the other higher authorities including the Chairman-cum-Managing Director at any stage. The advice of the petitioner was affirmed by the G.M. (F.& A.) then the Director (F) and then the Chairman-cum-Managing Director. The payment could have been withheld ignoring the note of the petitioner in respect of his opinion. As such, the act of the petitioner giving his opinion that the payment to the black listed Company M/s. Parco Dyechem cannot be said to be an act amounting to misconduct at all.

20. Moreover, the charge regarding the opinion on 26-7-1988, the petitioner was served with the charge sheet dated 26-10-1993 after about five years. Due to delay the charge is not sustainable in the eye of law and these two charges are malafide and biased due to the fact that the petitioner had challenged reversion orders before this Hon'ble Court. The order of the appellate authority is also illegal and not sustainable in the eye of law in view of the fact that all the materials on record have not been considered and without applying its mind to the facts and circumstances of the case, passed nonspeaking order as "rejected" only.

21. I have given my anxious thoughts to the contentions raised in this connection by the learned counsel for the parties. It is apparent from the official note that some legal notice was sent by M/s. Parco Dyechem and in that connection the retainer advocate of the respondent corporation was required to give reply and the petitioner also required to advise in that respect. As the petitioner was apprehending that he will be required to give advice in that respect, he met the advocate M/s. Nanavati & Nanavati Advocates of the respondent Corporation and discussed the matter and sought advice. The retainer advocate gave his opinion on the fact that the company M/s. Parco Dyechem has supplied the goods which were raw material and those materials were utilized by the textile unit of the

respondent Corporation. None of the raw material was found unsuitable nor of substandard nor it has been rejected on any count nor any part of the raw material was sent back to the party concerned. Once raw material sent by the party concerned has been utilized the question of stopping payment does not arise at all on the basis of the fact that some C.B.I. Inquiry was pending. C.B.I. inquiry was pending in respect of one colour which was to be supplied by the Company of Pune and that colour was also supplied by the Company concerned and it was not found unsuitable or substandard and the same was utilized. Once the raw material supplied by the party concerned has been utilized the payment cannot be withheld.

22. When the petitioner was required to give his opinion, his opinion is based on the opinion of the retainer advocate M/s. Nanavati and Nanavati Advocates and even if it is presumed that the M/s. Parco Dyechem was black listed company and that black listed company and certain companies including the supplier company M/s. Parco Dyechem and its sister concerns were black listed due to supply of substandard materials on earlier occasion. It cannot be presumed at this stage that the retainer advocate was not informed and the petitioner has not discussed with the retainer advocate that the payment of the black listed Company should be withheld or should be made clear because payment of other companies was made good prior 1987 and it is the same party whose payment was not made till that time and hence the opinion was required. The respondent Corporation could have recovered the amount of substandard material supplied by the Company concerned. In the case where the Company has supplied the material which was not found unsuitable and substandard or inferior quality and was utilized by the respondent Corporation and then the respondent Corporation is and was liable to make payment therefor. Secondly, it is a legal opinion on the basis of the legal opinion given by M/s. Nanavati and Nanavati retainer advocate of the respondent corporation and on one set of facts one Court takes one view and the higher Court takes another view and the third higher Court sets aside the view taken by the second higher court. Therefore, it cannot be said that the opinion given by the petitioner on the basis of the opinion of the retainer advocate M/s. Nanavati & Nanavati Associates for the respondent Corporation was erroneous amounting to misconduct and payment was erroneously made to M/s. Parco Dyechem on the basis of the opinion of the petitioner. Thirdly, it is the only opinion of the petitioner which could have been ignored by the General Manager (F & A) then the

Director (F) and then the Chairman-cum-Managing Director. At any stage, any of them would have applied their mind, and the opinion given by the petitioner could have been ignored and payment could have been withheld. As the petitioner was not the final authority to make payment, the petitioner cannot be held liable that on the basis of his wrong advice or opinion pertaining to the payment was sanctioned by the final authority of the respondent Corporation.

23. Giving of the opinion by the petitioner on the basis of which the payment was made to M/s. Parco Dyechem cannot be termed as misconduct for punishment of economic death i.e. extreme penalty of dismissal from service in view of the decision of the Apex Court in the case of Union of India Vs. J. Ahmed, reported in AIR 1979 SC 1022, wherein it has been held as under :

> "Lack of efficiency, failure to attain the highest standard of administrative ability while holding post would not themselves constitute misconduct. There may be negligence in performing duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to irreparable or the resultant damage would be so heavy that the degree of culpability would be very high."

In view of the decision in the case of Union of India Vs. J. Ahmed (supra) the opinion given by the petitioner cannot be said to be illegal and erroneous.

24. In the facts and circumstances, second charge is also not sustainable in the eye of law. The impugned orders Annexure "L" and "N" to Spl. C.A No. 7184/91, are arbitrary, illegal and null and void and hence they are liable to be quashed and set aside.

25. Accordingly, both these petitions deserve to be allowed and the petitioner is entitled to reinstatement to his original post of Law Officer with full back wages from the date of dismissal with all consequential benefits and the respondent Corportation is liable to pay all dues to the petitioner.

26. In view of the above discussion, both these petitions are allowed and the impugned order dated

28-3-1991 of the Chairman can Managing Director Annexure-L and the order of dismissal of appeal communicated by the letter dated 31-7-1991 Annexure-N to Spl. C.A. No. 7184/91 and the order dated 7-7-1995 dismissing the petitioner from service of Chairman-cum-Managing Director and orders dated 18-10-1995 dismissing the appeal of the petitioner passed by the Board of Directors and communicated to the petitioner by the letter dated 18-10-1995 at Annexure "H" and "I" to Spl. C.A. No. 1992/96, are hereby quashed and set aside. The petitioner is reinstated to his original post of Law Officer forthwith with full back wages, continuity of service for the purpose of post, pay, seniority and future promotion and all consequential benefits. The petitioner is awarded a punishment of withholding of three increments of pay without cumultative effect for a period of three years in place of punishment of reversion. The respondent is directed to give all consequential benefits to the petitioner from the date of dismissal and to pay all dues to the petitioner and calculate arrears of pay etc. including all consequential benefits from the date of dismissal of the petitioner from service, within two months from the date of production of a certified copy of this order and make payment thereof within a period of one month thereafter. Rule is made absolute to the aforesaid extent in both the petitions, with no order as to costs.

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